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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15 Jeremy Thacker,

16 Plaintiff,

17 v.

18 GPS Insight, LLC; Robert J. Donat,  
19 Individually and as Trustee of The  
20 Robert Donat Living Trust Dated April  
21 19, 2017,

22 Defendants.

No. 2:18-cv-00063-PHX-DGC

**DEFENDANTS' MOTION IN  
LIMINE TO PRECLUDE  
EVIDENCE OR THE USE OF  
TERMS RELATED TO DISMISSED  
CLAIMS**

23 Defendants request an order *in limine* as follows:

24 Precluding Plaintiff from offering argument, testimonial or documentary  
25 evidence, or using phrases associated with claims and issues previously  
26 resolved by the Court. This includes references to sexual harassment of  
27 Ms. Lisson including quid pro quo behavior, retaliation against Mr. Thacker  
28 and Ms. Lisson for objecting to sexual harassment including the quid pro  
quo behavior, actions taken and statements made against Mr. Thacker for  
being associated with Ms. Lisson and objecting to the sexual harassment  
and quid pro quo behavior, and Ms. Lisson's knowledge of relevant  
documents unproduced by Defendants. Plaintiff shall additionally be  
precluded from offering the following exhibits: Exhibits 12, 83, 106, 118,  
and 136.

As detailed below, the Court has resolved several legal issues through pre-trial  
rulings. Plaintiff nevertheless intends to offer evidence on these issues. The Court should  
preclude him from doing so.

1           **Title VII**

2           The Court previously granted summary judgment on Plaintiff's Title VII and Fair  
3 Credit Reporting Act claims. (Docs. 151, 162) The remaining claims for trial are tortious  
4 interference with contract, intrusion upon seclusion, false light, and defamation.

5           Plaintiff's portions of the proposed pretrial order reveals that they intend to offer  
6 testimony and exhibits that are only relevant to these dismissed claims. Joint Pretrial  
7 Order § D(1)(a) (plaintiff contends Donat's wrongful motive for tortious interference was  
8 "his desire to continue his harassment of Ms. Lisson") For example, Plaintiff discloses  
9 that Kristin Lisson will testify regarding Robert Donat's alleged "continued sexual  
10 harassment of her including quid pro quo behavior, the actions taken and statements made  
11 against Mr. Thacker for being associated with Ms. Lisson and objecting to the sexual  
12 harassment . . . ." Joint Pretrial Order § E(b). Other witnesses' anticipated testimony  
13 relates to the Title VII claim and uses Title VII buzz words. Joint Pretrial Order § E(d),  
14 (e), (f), (g), (h), (m). Plaintiff likewise lists evidence that would only have been relevant  
15 (if at all) to a Title VII claim, such as the email in which Kristin Lisson first makes a  
16 complaint – sent three days *after* Plaintiff was terminated. (Ex. 83). These are the precise  
17 legal theories and evidentiary issues the Court resolved through summary judgment.<sup>1</sup>  
18 (Doc. 151 at 3-20, Doc. 162 at 2-4)

19           Plaintiff is precluded from re-litigating issues already resolved by the Court's  
20 summary judgment ruling and ruling on the motion to reconsider the same. Arguments,  
21 phrases, and evidence pertaining to the Title VII claim are not relevant to any element of  
22 a claim to be tried, and such references will only confuse the jury as to the issues, and  
23

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24 <sup>1</sup> Similarly, Ms. Lisson recently testified at a state court hearing that she supposedly  
25 complained about harassment to Jason Walker prior to March 9, 2019, despite her  
26 testimony in this case that she did not complain about harassment until March 9, 2019.  
27 The Court has already resolved this precise issue. (Doc. 151 at 9:26-10:4 (noting Ms.  
28 Lisson's testimony that she "actually made [her] complaint on March 9" . . . ). Her  
complaints to a supervisor, however, would only have been relevant to the Title VII claim.  
Such testimony has no bearing on any element of a claim or defense regarding the tortious  
interference claim against Rob Donat.

1 waste time. FRE 402, 403. Further, use of Title VII buzz-phrases will unfairly prejudice  
2 Defendants because the terms are so charged, such as “harassment” or “quid pro quo.”  
3 Indeed, Plaintiff has made clear he hopes to inflame the decision-maker such that the case  
4 will be decided on such an improper basis. (Plf.’s Mot. for Reconsideration (Doc. 153 at  
5 5), claiming Donat should have stopped his alleged pursuit of Lisson without her having  
6 to complain, but that “such is rarely the case for rich, unscrupulous men, as recent national  
7 events have made clear.”).

### 8 **Discovery Disputes**

9 The Court has resolved numerous discovery disputes in this case. Most recently,  
10 the Court ruled that Defendants were not required to produce certain text messages  
11 between Rob Donat and Kristin Lisson, in part because Plaintiff had not properly  
12 requested them under the discovery rules. (Doc. 161 at 4-5) Nevertheless, Plaintiff has  
13 listed Ms. Lisson to testify about her “knowledge of documents unproduced by  
14 Defendants . . . .” Plaintiff has additionally listed exhibits and issues that suggest he is  
15 going to argue that Defendant destroyed documents after it knew litigation was likely.  
16 *See* Exs. 112, 116 (litigation hold letters); Pretrial Order § D(1)(p) (making same  
17 argument as was addressed in Doc. 152 at p.4 § III and p.8 § II that there was supposedly  
18 spoliation of a sales policy) Plaintiff elected not to pursue the Court’s direction to file a  
19 motion if he believed there had been spoliation. (Doc. 155 at (2) (resolving issues raised  
20 in Doc. 152)) Defendants have produced everything they were required to whether under  
21 the MIDP Order or this Court’s subsequent discovery dispute orders.

22 The Court ruled there are no “documents unproduced by Defendants,” only  
23 documents not properly requested by Plaintiff. Plaintiff is precluded from arguing  
24 otherwise or adducing contrary testimony. Nor is such testimony relevant. FRE 402.  
25 Rather, such evidence/argument only seeks to incorrectly imply that Defendants engaged  
26 in misconduct in this case and have the jury decide the case based on that improper  
27 premise. It is therefore unfairly prejudicial and seeks to inflame the jury. FRE 403.  
28

**Statement of Conferral**

Undersigned counsel certifies that they have in good faith conferred with opposing counsel in an effort to resolve the disputed evidentiary issues that are the subject of the motion.

RESPECTFULLY SUBMITTED this 26th day of November, 2019.

**STINSON LLP**

By: /s/ Stefan Palys

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2019, I caused the foregoing document to be filed electronically with the Clerk of Court through ECF; and that ECF will send an e-notice of the electronic filing to:

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I hereby certify that on November 26, 2019, a courtesy copy was e-mailed to:

Judge David G. Campbell  
United States District Court  
Sandra Day O'Connor U.S. Courthouse, Suite 623  
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/s/ Joanne McClearn